IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1254 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANCHHOD JIVRAJBHAI PATEL

Versus

NAVNIRAMAN KELAVNI MANDAL TRUST

Appearance:

MR VIMAL M PATEL for Petitioners

NOTICE SERVED for Respondent No. 1

MR RD DAVE for Respondent No. 2 and 3

GOVERNMENT PLEADER for Respondent No. 5, 6

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/01/2001

ORAL JUDGMENT

1. The revisioners are the original plaintiffs in Regular Civil Suit No.6 of 1987, pending before the District Court, at Rajkot. The Joint District Judge, Rajkot, by his order dated the 9th November, 2000,

dismissed application Ex.129, which has aggrieved the present revisioners.

2. The suit in question came to be filed against the present opponents by plaintiffs in representative capacity. An application-Ex.1 was given along with the suit under Order I, Rule 8, seeking permission to file the suit in representative capacity (Annexure-B). This application appears to have been granted as can be seen from the copy of the Roznama of the Trial Court produced on record. Following the order, an amount of Rs.500/appears to have been deposited by the plaintiff as is evident from Purshis-Ex.18 (Annexure-C). This Purshis is dated 15.9.1987. By virtue of provision of Order I, Rule 8, clause (2), the Court was required to issue notice to all concerned or to issue a public advertisement. In facts and circumstances of the case, the plaintiffs were directed to deposit the amount for issuance of public advertisement. Somehow, it appears that such advertisement was not issued. There were several applications which came to be decided resulting multiple follow up litigation. Ultimately, on 14.9.2000, application Ex.129 came to be given praying the Court to publish the advertisement as required under Order I, Rule 8, clause (2), which has not been done. The Trial Court rejected the application on the ground that the plaintiffs have slept over such issue for a long time of 13 years. There is a direction from this Court to the Trial Court to dispose of the suit by 31st August, 2000 and under the circumstances, the application was dismissed.

3. Rule. Heard learned advocate, Mr. Vimal Patel, for the petitioner, Mr. R.D. Dave for respondents No.2 and 3 and Mr. P.K. Shukla for respondents No.5 and 6, who appear on notice and waive service of Rule. In facts and circumstances of the case, by consent of parties, this matter is taken up today for final hearing.

4. Learned advocate Mr. Patel has placed reliance on a decision in the case of Bishan Singh Kala Singh & Ors. v. Mastan Singh Sarup Singh & Another, AIR 1960 (Punjab) 26, where in a Second Appeal, it was held that failure on part of the Court in issuance of such notice to concerned under Order 1, Rule 8 would vitiate the entire trial. Mr. Patel, therefore, urged that all necessary steps have been taken by the plaintiff to get the notice issued. The lapse has occurred due to inadvertence on part of the Registry of the Court. This may not be permitted to perpetuate and result into denial of the right of the plaintiff and the trail may not be

permitted to be vitiated. Mr. Patel submitted that this aspect is overlooked by the Court below.

5. Mr. Dave, on the other hand, has vehemently opposed. He submitted that this is a delaying tactic adopted by the plaintiffs-revisioners. In fact, respondents No.2 and 3 have already resigned as trustees and change report is pending. According to Mr. Dave, an application is given for de-registration of the trust in 1989 and, therefore, the relief sought by the plaintiffs would not survive.

6. Having regard to the rival side contentions, it appears from the language of Order I, Rule 8, clause (2) read with order below Ex.1 that it is mandatory for the Court to issue the notice. What was required to be done by the plaintiffs has already been done. This Court, at present, is not concerned as to whose fault it was that the notice was not published even after deposit of the amount by the plaintiffs. But the public advertisement is required to be issued as was directed by the Court below while granting application Ex.1. It is unfortunate that order below Ex.1 is not available. But reading of the Roznama and Purshis filed at Ex.18 makes it clear that the Court must have ordered publication of advertisement. Mandatory requirements of Order I, Rule 8, Clause (2) of C.P.C. having not been complied with, it would vitiate the proceedings and trial. Non-compliance thereof by non-publication of advertisement will shut the door for people interested in joining the litigation which would go to the root of the trial. This would also put the plaintiff to jeopardy for no fault of his. This situation cannot be permitted to stand. Under the circumstances, this revision application deserves to be allowed.

7. Revision application is allowed. The order below Ex.129 in Regular Civil Suit No.6 of 1987, dated the 9th November, 2000, passed by the Joint District Judge, Rajkot, is hereby quashed and set aside. The Trial Court shall publish the requisite advertisement as required under Order I, Rule 8, clause (2). If any additional cost is required to be borne for the purpose, it shall be borne by the plaintiffs-revisioners. The Trial Court shall expedite publication of the advertisement, preferably, within three weeks from receipt of the writ of this Court and the revisioners shall deposit requisite amount as may be directed by the Court below, without delay. After publication, the Trial Court shall decide the suit as expeditiously as possible, keeping in mind the earlier direction of this Court directing the Trial

Court to dispose of the suit before the 31st August, 2000. Rule is made absolute with no orders as to costs.

Direct service to respondents is permitted.

[A.L. DAVE, J.]

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